

REMARKS

The Office Action mailed December 11, 2007 has been carefully considered.
Reconsideration in view of the following remarks is respectfully requested.

Election Requirement

Applicants affirm the election, with traverse, to prosecute the invention of Group I, Claim 2. As explained below, claim 1 has been amended to include the limitations of claim 2, with some modifications. Most notably, the term “bit error rate” that was in claim 2 has been changed to the broader “error rate,” and amended claim 1 now refers to “error rate” rather than “bit error rate.” In this sense claim 1 is now generic of claims 2 (canceled; bit error rate), 3 (byte error rate), and 4 (packet error rate), and the specific bit, byte and packet limitations have been introduced in dedicated claims 25-27 dependent from claim 1, and in dedicated claims 29-31 dependent from new independent claim 28, and in dedicated claims 33-35 dependent from new independent claim 32. The new independent claims (28 and 32) are analogous to claim 1, but are respectively in computer-readable medium (claim 28) and apparatus (claim 32) form.

Subject Matter Indicated Allowed or Allowable

Applicants gratefully acknowledge the indication of allowability of claim 2.

Rejection(s) Under 35 U.S.C. § 102

Claim 1 stands rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Grimwood et al. (U.S. pat. no. 6,459,703).

Claim 1 has been amended to implement the changes suggested in the Office Action, and to include limitations of claim 2, which was indicated to be allowable. It should be noted however that the term “bit error rate” that was in claim 2 has been changed to the broader “error rate,” and amended claim 1 now refers to “error rate” rather than “bit error rate.” Grimwood, which was applied against claim 1 in the anticipation rejection, does not disclose error rate. Rather, in Grimwood, classification takes place based on symbol rate or multiplexing type (*see e.g.* Grimwood abstract). For this reason at least, claim 1 as amended is patentable over Grimwood.

Claims 28 and 32 contain similar limitations and are allowable for at least the same reasons.

It will be appreciated that, according to the M.P.E.P., a claim is anticipated under 35 U.S.C. §102 only if each and every claim element is found, either expressly or inherently described, in a single prior art reference.¹ The aforementioned reasons clearly indicate the contrary, and withdrawal of the 35 U.S.C. § 102 rejection based on Grimwood is respectfully urged.

Conclusion

In view of the preceding discussion, Applicants respectfully urge that the claims of the present application define patentable subject matter and should be passed to allowance.

If the Examiner believes that a telephone call would help advance prosecution of the present invention, the Examiner is kindly invited to call the undersigned attorney at the number below.

Please charge any additional required fees, including those necessary to obtain extensions of time to render timely the filing of the instant Amendment and/or Reply to Office Action, or credit any overpayment not otherwise credited, to our deposit account no. 50-1698.

Respectfully submitted,
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¹ Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).